

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION**

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**IN RE:**  
**CUMMINGS MANOOKIAN, PLLC,**  
**Debtor.**  
**BRIAN MANOOKIAN,**  
**Appellant,**  
**v.**  
**JEANNE ANNE BURTON, TRUSTEE,**  
**Appellee.**

**Case No. 3:24-cv-00209  
Judge Trauger**

**On Appeal from the United States  
Bankruptcy Court for the Middle  
District of Tennessee  
3:19-bk-07235**

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**APPELLANT'S RESPONSE IN OPPOSITION TO APPELLEE JEANNE ANNE  
BURTON'S MOTION TO DISMISS APPEAL**

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Appellant, through counsel, responds pursuant to Local Rule 7.01(a)(3) in opposition to Trustee Jeanne Anne Burton's ("Appellee") Motion to Dismiss Untimely Appeal.

This Court has previously and summarily denied a similar motion to dismiss an appeal when Appellant inadvertently filed his statement of issues and designation of record one day after the asserted deadline.

In the instant motion, the *sole* argument Appellee advances to support dismissal of Appellant's notice of appeal is that this Court lacks subject matter jurisdiction over the appeal because the notice of appeal was filed one day after the 14-day deadline. Mot. at 1 ("Because

Appellant filed his notice of appeal late, the District Court lacks jurisdiction to consider the merits of this appeal.”). Appellee unequivocally asserts: “*Every circuit* to have reviewed this issue agrees that the requirement that a notice of appeal be timely filed is *jurisdictional*; the failure to timely file an appeal *bars* further appellate review.” Mot. at 4-5 (collecting cases from all circuits, including *In re Felix*, 2018 U.S. App. LEXIS 7202, \*2 (6th Cir. 2018)) (emphasis added).

However, Appellee’s argument is squarely contradicted by Sixth Circuit precedent. Indeed, Appellee omits any mention of a 2020 Sixth Circuit opinion that squarely considers the issue at length, holding that “Bankruptcy Rule 8002(a)(1)’s 14-day time limit for filing a notice of appeal does not create a jurisdictional imperative.” *In re Tennial*, 978 F.3d 1022, 1025, 1028 (6th Cir. 2020) (Sutton, J.) (finding that “the 14-day deadline created by Bankruptcy Rule 8002(a)(1) does not create a jurisdictional limit on the federal courts,” while holding that the party’s appeal should be dismissed because it sought review of an automatic stay in violation of another provision of the rule). Appellee’s position is flatly undermined by *In re Tennial*—a case Appellee fails to mention.

The sole Sixth Circuit case cited by Appellee, *In re Felix*, actually calls Appellee’s position into doubt. See *In re Felix*, 582 B.R. 915, 920 (B.A.P. 6th Cir. 2018). There, the Bankruptcy Appellate Panel, in an opinion authored by Judge Marion F. Harrison, declined to dismiss an appeal where appellants filed their brief one day late and flouted the Bankruptcy Rules’ formatting conventions. “While the Panel has authority to dismiss an appeal for failure to comply with briefing requirements, the Sixth Circuit favors adjudication on the merits and has cautioned that dismissal ‘is a harsh sanction which the court should order only in extreme situations showing ‘a clear record of delay or contumacious conduct by the plaintiff.’ ” *Id.* (“The Trustee has not asserted that the debtors acted in bad faith, nor has he articulated any prejudice resulting from the debtors’ late brief or from its formatting.”)

Here, Appellants' late-filed notice occurred after a death in undersigned counsel's family necessitated counsel's attention for the two weeks in February immediately following the Bankruptcy Court's entry of two orders that were completely unexpected in light of the Bankruptcy Court's comments at a hearing immediately preceding the orders. Appellee has not articulated any prejudice arising from the one-day delay, nor does she assert that Appellant acted in bad faith in filing the Notice of Appeal one day late. While this Court has previously considered a related appeal and may be reluctant to entertain another appeal in this case, here the Bankruptcy Court issued two unexpected orders hurriedly and without receiving new evidence demonstrating that the value of the claim underlying the Trustee's \$250,000 settlement had become zero thanks to the dismissal of the underlying lawsuit. The Court should exercise its discretion to consider the appeal.

### **CONCLUSION**

For the foregoing reasons, Appellant respectfully requests that the Court deny Appellee's Motion to Dismiss.

Date: May 31, 2024

Respectfully submitted,

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## **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the foregoing Response in Opposition to Motion to Dismiss was filed May 31, 2024, and served electronically upon the following parties using the Court's electronic filing system:

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